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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,412	01/06/2004	Matthew J. Paquette	29939/03001A	3903
4743	7590	09/30/2004	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			NGUYEN, SON T	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/752,412	PAQUETTE
	Examiner	Art Unit
	Son T. Nguyen	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 January 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-43 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-43 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 January 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/12/04, 6/30/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 4/12/04 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the non patent literature documents are of poor quality. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Claim Objections

2. Claims 3 & 38 objected to because of the following informalities: For claim 3, line 2, "the" (1st occurrence) needs to be deleted. For claim 38, line 2, "pacing" needs to be changed to ----placing---. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 34,35,37,40** are rejected under 35 U.S.C. 102(b) as being anticipated by US 3752121 (herein 121).

For claim 34, 121 teaches a method of collecting cat litter comprising providing a piece of indoor/outdoor carpeting 30; shaping the piece of carpeting into a litter mat (as shown); and placing the litter mat near the litter box 20.

For claim 35, 121 inherently teaches trimming the piece of carpeting to a rectangular shape as shown in the drawings.

For claim 37, 121 teaches facing angled tufts toward the litter box as shown in figs. 3 & 4.

For claim 40, 121 teaches masking litter with a plurality of tufts 31 of the litter mat.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 1-3,9-16** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 3752121 (herein 121) in view of US 4271544 (herein 544) and US 5233787 (herein 787).

For claims 1 & 9, 121 teaches a litter mat for use with a litter box, comprising: a base having a first substrate 32 and a second substrate 32,33, wherein the second substrate is constructed from a plastic material and is fixedly attached to the first substrate; a plurality of tufts 31 extending through the first substrate and in an angled upwardly direction therefrom; and a perimeter having an edge portion. However, 121

teaches a plastic material for the second substrate but it is uncertain if the plastic material displays non-slipping characteristic. Also, 121 teaches the mat can be shaped or cut to fit the desired usage area but is silent about the perimeter having an edge portion shaped to correspond to a portion of a litter box.

544 teaches a litter mat 1 comprising a perimeter having an edge portion shaped to correspond to a portion of a litter box (see fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a perimeter with an edge portion corresponding to a portion of a litter box as taught by 544 in the litter mat of 121 in order to make the assembly more pleasing in appearance by having the edge contour to the litter box.

787 teaches a litter mat comprising a backing 2 made out of synthetic rubber material (col. 2, lines 31-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the second substrate of 121 out of a synthetic rubber material as taught by 787, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (to prevent slippage) as a matter of obvious choice.

For claims 2 & 3, in addition to the above, 544 teaches the edge portion having a notch to accommodate to the shape of the litter box 19, the notch is shaped to fit around a portion of the litter box is disposed near a center of a rear edge of the mat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a notch as taught by 544 in the perimeter edge portion of the litter mat

of 121 as modified by 544 & 787 in order to accommodate to different litter box shape and size.

For claim 10, 121 as modified by 544 & 787 (emphasis on 121) further teaches a third substrate 34 attached to the second substrate 33.

For claim 11, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the third substrate of 121 as modified by 544 & 787 out of a latex rubber and/or synthetic rubber material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claim 12, 121 as modified by 544 & 787 (emphasis on 121) further teaches the tufts have a color combination (col. 2, lines 59-63).

For claims 13 & 14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the angle of the tufts of 121 as modified by 544 & 787 be between 30 degrees and 50 degrees or approximately 40 degrees relative to the base, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

For claim 15, 121 as modified by 544 & 787 (emphasis on 121) further teaches the tufts are angled toward a part of the base intended to be adjacent to the litter box (see figs. 3 & 4).

For claim 16, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the litter mat of 121 as modified by 544 & 787

retains at least 99% of litter propelled toward the litter mat, depending on if the animal kicks harder than usual or not to send the litter towards the mat.

7. **Claims 4,5,17** are rejected under 35 U.S.C. 103(a) as being unpatentable over 121 as modified by 544 & 787 as applied to claim 1 above, and further in view of US 6386143 (herein 143).

For claims 4 & 5, 143 teaches a pad for litter box comprising an arcuate edge having a convex shape (where ref. 20 is pointing at). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an arcuate edge as taught by 143 in the mat of 121 as modified by 544 & 787 in order to prevent injury to the animal due to the corner being arcuate.

For claim 17, in addition to the above, 143 further teaches a border 50,60,70 disposed around at least a portion of the perimeter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a border as taught by 143 around the perimeter of the mat of 121 as modified by 544 & 787 in order to retain dislodged litter material and to make the mat more pleasing in appearance.

8. **Claims 6-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over 121 as modified by 544 & 787 as applied to claim 1 above, and further in view of US 3332828 (herein 828).

For claim 6, 828 teaches a pile product that can be used as a mat, the mat comprising tufts 12 that are made out of polypropylene material (col. 2, line 26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the tufts of 121 as modified by 544 & 787 out of polypropylene as

taught by 828, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claims 7 & 8, in addition to the above, 828 teaches a first substrate being made out of a polypropylene material (col. 3, lines 17-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first substrate of 121 as modified by 544 & 787 out of polypropylene material as further taught by 828, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

9. **Claims 18,19,23,24,29-32,36** are rejected under 35 U.S.C. 103(a) as being unpatentable over 121 (as above) in view of 544 (as above).

For claim 18, in addition to the above, 544 further teaches the base 1 extending beyond a litter box perimeter (see fig. 1) near an entry/exit point of the litter box (the extension is where ref. 1 is pointing at in fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the base of 121 extends beyond the litter box perimeter near an entry/exit point of the litter box as taught by 544 in order to provide extra coverage to dislodge litter material from the animal's paws.

For claims 19 & 22, see claim 1 for explanation.

For claim 23, see claim 2 for explanation.

For claim 24, see claim 3 for explanation.

For claim 29, see claim 12 for explanation.

For claims 30 & 31, see claims 13 & 14 for explanation.

For claim 32, see claims 15 & 18 for explanation.

For claim 36, see claim 2 for explanation. 544 teaches the step of creating a notch as explained.

10. **Claims 20,21,27** are rejected under 35 U.S.C. 103(a) as being unpatentable over 121 as modified by 544 as applied to claim 18 above, and further in view of 828 (as above).

For claims 20 & 21, see claims 7 & 8 for explanation.

For claim 27, see claim 6 for explanation.

11. **Claims 22,28** are rejected under 35 U.S.C. 103(a) as being unpatentable over 121 as modified by 544 as applied to claims 18,19 above, and further in view of 787 (as above). 787 teaches a litter mat comprising a backing 2 made out of synthetic rubber material (col. 2, lines 31-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the second substrate of 121 as modified by 544 out of a synthetic rubber material as taught by 787, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (to prevent slippage) as a matter of obvious choice.

12. **Claims 25,26,33** are rejected under 35 U.S.C. 103(a) as being unpatentable over 121 as modified by 544 as applied to claim 18 above, and further in view of 143 (as above).

For claim 25, see claim 4 for explanation.

For claim 26, see claim 5 for explanation.

For claim 33, see claim 17 for explanation.

13. **Claims 38,39** are rejected under 35 U.S.C. 103(a) as being unpatentable over 121 (as above) in view of 143 (as above).

For claim 38, 143 teaches placing at least a portion of the mat 10 under the litter box. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include placing at least a portion of the mat under the litter box as taught by 143 in the method of 121 in order to further stabilize the mat.

For claim 39, in addition to the above, 143 teaches creating a border 50,60,70 around the perimeter of the mat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the step of creating a border around the perimeter of the mat as taught by 143 in the method of 121 in order to retain dislodged litter material and to make the mat more pleasing in appearance.

14. **Claim 41** is rejected under 35 U.S.C. 103(a) as being unpatentable over 121 (as above) in view of 828 (as above). See claim 7 for explanation.

15. **Claim 42** is rejected under 35 U.S.C. 103(a) as being unpatentable over 121 as modified by 828 as applied to claims 34,41 above, and further in view of 787 (as above). See claim 9 for explanation.

16. **Claim 43** is rejected under 35 U.S.C. 103(a) as being unpatentable over 121 (as above) in view of 828 (as above) & 787 (as above). See claims 1,7,9 for explanations.

Art Unit: 3643

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen
Primary Examiner, GAU 3643
September 27, 2004